

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**PLUMBERS & PIPEFITTERS LOCAL UNION 521;
PLUMBERS & PIPEFITTERS LOCAL 521 HEALTH
AND WELFARE FUND; PLUMBERS & PIPEFITTERS
LOCAL 521 PENSION FUND; PLUMBERS & PIPEFITTERS
LOCAL 521 SUPPLEMENTAL HEALTH FUND;
PLUMBERS & PIPEFITTERS LOCAL 521 ANNUITY FUND;
and PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND**

Plaintiffs,

v.

Civil Action No. 3:21-cv-00312

MATHENY AND SONS GENERAL CONTRACTING, LLC

and

**STEVE MATHENY, individually and as the
Agent and Manager of Matheny and Sons General Contracting, LLC,**

Defendants.

COMPLAINT FOR MONIES DUE

1. This is an action brought pursuant to § 301 of the Labor Management Relations Act, 29 U.S.C. § 185; and §§ 502 and 515 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§ 1132 and 1145. Jurisdiction and venue are conferred on this Court by 29 U.S.C. §§ 185(a), 1132(a), (e)-(f); and 28 U.S.C. § 1331.

2. Plumbers & Pipefitters Local Union 521 (Local 521) is a labor organization under 29 U.S.C. § 152(5), and represents employees who are an industry “affecting commerce.” See 29 U.S.C. § 152(7).

3. Local 521's principal place of business is located at 2586 Guyan Avenue, Huntington, West Virginia 25703.

4. Plumbers & Pipefitters Local 521 Health and Welfare Fund (521 H&W Fund) is an employee welfare benefit plan as is defined in 29 U.S.C. § 1002(1). The 521 H&W Fund is

authorized to sue in its own name and under 29 U.S.C. § 1132(d)(1).

5. The 521 H&W Fund is administered in Ona, West Virginia by its Plan Trustees.

6. The Plumbers & Pipefitters Local 521 Pension Fund (521 Pension Fund) is an employee pension benefit plan as defined in 29 U.S.C. § 1002(2). The 521 Pension Fund is authorized to sue in its own name and under 29 U.S.C. § 1132(d)(1).

7. The 521 Pension Fund is administered in Ona, West Virginia by its Plan Trustees.

8. Plumbers & Pipefitters Local 521 Supplemental Health Fund (521 SH Fund) is an employee welfare benefit plan as is defined in 29 U.S.C. § 1002(1). The 521 SH Fund is authorized to sue in its own name and under 29 U.S.C. § 1132(d)(1).

9. The 521 SH Fund is administered in Ona, West Virginia by its Plan Trustees.

10. The Plumbers & Pipefitters Local 521 Annuity Fund (521 Annuity Fund) is an employee pension benefit plan as defined in 29 U.S.C. § 1002(2). The 521 Annuity Fund is authorized to sue in its own name and under 29 U.S.C. § 1132(d)(1).

11. The 521 Annuity Fund is administered in Ona, West Virginia by its Plan Trustees.

12. Plumbers & Pipefitters National Pension Fund (NPF) is an employee pension benefit plan as defined in 29 U.S.C. §1002(2). The NPF is authorized to sue in its own name and under 29 U.S.C. § 1132(d)(1).

13. The NPF is administered in Alexandria, Virginia by its Plan Trustees.

14. Defendant, Matheny and Sons General Contracting, LLC, (hereinafter referred to as Matheny and Sons), is an employer under 29 U.S.C. § 152(2) and under 29 U.S.C. § 1002(5). Matheny and Sons is a party to a collective bargaining agreement with Local 521. Matheny and Sons' principal place of business at all times material hereto was 40 Hamill Road, Huntington, West Virginia 25701.

15. Defendant, Steve Matheny, is the Agent and Manager of Matheny and Sons. Defendant, Steve Matheny, is an employer under 29 U.S.C. § 1002(5), 29 U.S.C. § 152 (2), a fiduciary under ERISA, and is jointly and severally liable for the obligations of Matheny and Sons under 29 U.S.C. § 1145 and under the collective bargaining agreement between the parties.

16. On or about November 22, 2019, Mr. Matheny signed the Collective Bargaining Agreement between Local 521 and the Huntington Plumbing Heating & Cooling Contractors Association (Association). The signature page is attached hereto as **Exhibit 1**.

17. The Collective Bargaining Agreement obligated and continues to obligate the Association and all other employers signing on to the Agreement to contribute monthly to Plaintiffs and pay all other fringe benefits on behalf of all employees in the bargaining unit covered by the Agreement.

18. The Collective Bargaining Agreement requires that employers make monthly payments and file monthly Remittance Reports for fringe benefits on or before the tenth (10th) day of each month. The monthly Remittance Reports are utilized by the employers to calculate the payments they owe to Plaintiffs.

19. Defendants made late contributions and failed to make contributions to Plaintiffs for various months during the time period of May 2020 through September 2020. The known amount of fringe benefit contributions owed is forty-nine thousand nine hundred nineteen dollars and sixty-three cents (\$49,919.63). The amount of liquidated damages and interest owed for Plaintiff Plumbers & Pipefitters National Pension Fund calculated as of April 30, 2021 is four thousand eight hundred four dollars and eighty-five cents (\$4,804.85). The liquidated damages and interest for all remaining Plaintiffs will be calculated and supplemented at a later date.

20. Defendants' refusal to remit payment to Plaintiffs violates the Collective Bargaining

Agreement, the provisions of the Plaintiffs Plans and Funds, Steve Matheny's fiduciary duty owed to Plaintiffs, and the requirements of ERISA.

21. A copy of this Complaint will be served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by 29 U.S.C. § 1132(h).

WHEREFORE, Plaintiffs ask that this Court require Defendants jointly and severally to pay:

1. Unpaid contributions in the amount of forty-nine thousand nine hundred nineteen dollars and sixty-three cents (\$49,919.63);
2. Any additional contributions discovered to be owed;
3. Interest on the late contributions;
4. An amount equal to the greater of:
 - (a) The interest on the unpaid contributions,
 - or,
 - (b) Liquidated damages provided for under the plans in an amount not in excess of 20% (or such higher percentage as may be permitted under Federal or State Law);
5. Reasonable attorney fees and costs incurred prior to filing and during the litigation of this action; and
6. Such other legal or equitable relief which the Court deems appropriate.

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LOCAL 521 HEALTH AND WELFARE
FUND; PLUMBERS & PIPEFITTERS
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PLUMBERS & PIPEFITTERS LOCAL
521 SUPPLEMENTAL HEALTH FUND;
PLUMBERS & PIPEFITTERS LOCAL**

**521 ANNUITY FUND and PLUMBERS &
PIPEFITTERS NATIONAL PENSION
FUND**

By Counsel,

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